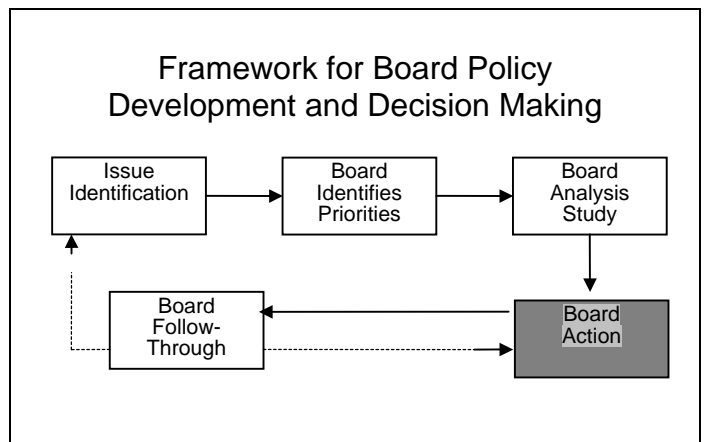


Iowa State Board of Education

Executive Summary May 11, 2006



Agenda Item: *In re Closing of Moore Elementary, Edmunds Academy, Adams Elementary, Cowles Elementary and Central Campus, 24 D.o.E. App. Dec. 21.*

Iowa Goal: 2. All K-12 students will achieve at high levels, prepared for success beyond high school.

Equity Impact Statement: This decision provides continuing guidance for local school boards that face building closing determinations, as well as parents who seek knowledge about the required procedure that must be followed when a building is closed.

Presenter: Carol Greta, Legal Consultant

Attachments: 4

Recommendation: It is recommended that the State Board approve the Administrative Law Judge's proposed decision In re Closing of Moore Elementary, Edmunds Academy, Adams Elementary, Cowles Elementary and Central Campus.

Background: On July 12, 2005, the Des Moines school board voted to close certain of its attendance centers. This decision occurred as a result of a mid-program review of the District's Ten Year Plan (which commenced in 1999) for creating "21st Century Schools." Five years into the Ten Year Plan, the District was faced with declining enrollments, declining revenues, and increased costs.

These decisions and reviews thereof are governed by chapter 19 of the Department's administrative rules, also known as the *Barker*

BEFORE THE IOWA BOARD OF EDUCATION

<p>MARC R. WALLACE, GREGORY A. WELLS, SHANNON BOSWELL, MIKE MURRAY, GAYLE J. MURRAY, KATHLEEN L. GINGERICH, TRACY LYNCH, SCOTT D. NEAL,</p> <p style="text-align: center;">Appellants,</p> <p>v.</p> <p>DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT BOARD OF DIRECTORS,</p> <p style="text-align: center;">Appellee.</p>	<p>[Adm. Doc. #4614]</p> <p style="text-align: center;">APPELLANTS' BRIEF IN SUPPORT OF THEIR NOTICE OF APPEAL AND REQUEST TO PRESENT ORAL ARGUMENT</p>
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I. STATEMENT OF THE NATURE OF APPELLANTS' APPEAL TO THE STATE BOARD FROM THE PROPOSED DECISION

Appellants take exception to the findings of fact and conclusions of law of the Proposed Decision that the Des Moines School Board substantially complied with this Board's "chapter 19 rules" in the process whereby it determined whether to close six attendance centers within its district without involving public notice, public consideration and public involvement.

I.A.C. Section 281-19.1 provides:

281-19.1(256,279) Policy.

The board of directors of a school district has discretion as to the number of attendance centers it shall operate within the district. The process for determining whether to close an attendance center must involve public notice, public consideration and public involvement. The policies set forth in rule 281-19.2(256,279) are meant to ensure full opportunity for public participation in the relevant events. It is intended that the policies shall be implemented by local boards in such a way as will most reasonably accommodate the specific facts and circumstances surrounding the decision with which the local board is faced.

These rules are intended to implement Iowa Code sections 256.7(5) and 279.11.

[Filed 5/9/03, Notice 4/2/03—published 5/28/03, effective 7/2/03]
IA ADC 281-19.2(256,279)

I.A.C. Section 281-19.2 provides:

281-19.2 (256,279) Attendance center closing procedure.

When making a decision regarding whether to close an attendance center within its district, the board of directors of a school district shall substantially comply with all of the following steps.
19.2(1) The board shall establish a timeline in advance for carrying out the procedures involved in making the decision on the matter, focusing all aspects of the timeline upon the anticipated date that the board will make its final decision.

19.2(2) The board shall inform

segments of the community within its district that the matter is under consideration by the board. This shall be done in a manner reasonably calculated to apprise the public of that information.

19.2(3) The board shall seek public input in all study and planning steps involved in making the decision.

19.2(4) The board and groups and individuals selected by the board shall

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19.2(5) The board shall promote open and frank public discussion of the facts and issues involved.

19.2(6) The board shall make a
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record
of all
steps
taken
in the
making
of the
decision.

19.2(7) The board shall make its
final
decision in an
open
meeting with
a
record
made
thereof

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These rules are intended to implement Iowa
Code sections
256.7(5) and 279.11.

[Filed 5/9/03, Notice 4/2/03—published 5/28/03, effective 7/2/03]
IA ADC 281-19.2 (256,279)

II. STATEMENT OF FACTS

In October, 2004 the Des Moines School Board authorized its Executive Director of Facility Management for the Des Moines Schools, Duane Van Hemert, to commence a Mid Program Review of its first five years of expenditures of the special school infrastructure local option sales and services tax (LOSST) revenues. The ten year program for the use of such

revenues--one of the largest, if not the largest construction project in Polk County history--was submitted to and approved by the voters in November, 1999. Van Hemert reported significant reductions in the actual revenues received in the first five years from those projected by the Polk County Taxpayers' Association in 1999.

Also in October, 2004, Van Hemert informed the Adams School Building Facility Site Planning Committee, formed pursuant to the Ten Year Plan, it should proceed with its meetings to draw up the educational plan and the priorities for repair and restoration of the Adams School building with the special school infrastructure LOSST revenues since it was clear that there was no community consensus that Adams School should be merged with Garton Elementary School as the School Board desired. Van Hemert Depo. at pp. 142-143. Van Hemert testified his direction from the School Board was to ask schools to consider mergers as a possibility but that mergers would only occur if the consensus of the community was that it was a good idea. Id. This directive was in accord with the provisions of the Ten Year Plan. Hearing Exhibit No. 2 at p. 2.

At some point in January or February 2005, Van Hemert began research, study and planning related to school closures as a part of his Mid Program Review. Van Hemert Depo. at pp. 50-53, 44-47. District Board members were considering closing schools in February, March, April and May of 2005. Id. at pp. 35-37. At the February 15, 2005 School Board meeting, Van Hemert made his initial Mid Program Review report which included, in a power point presentation under the heading "PLAN FOR DEMOGRAPHIC CHANGES", the words "Mergers and/or Closures". Hearing Exhibit No. 15. **No agenda or other notice prior to the February 15, 2005, District Board meeting mentioned school closures. There was no** mention of "closures" in the tentative agendas, the minutes, the public meeting notices and the School Board Press releases for the period of October 4, 2004 to May 27, 2005. Hearing Exhibit No. D at Paragraphs 5 through 7. There is simply no mention of attendance center closings as a topic of either anticipated or actual discussion, review, deliberations, or action in any of the public

records of School Board proceedings for this period during which the research, study and planning leading up to the School Superintendent's Mid Program Review recommendation, including the school closures **was conducted behind closed doors by the District Board's staff.** Id.; Van Hemert Depo. at pp. 44-47, 50-53, 104-105.

During the February 15, 2005 discussion of Van Hemert's Mid Program Review, School Board Member Marc Ward presented a "flow chart" which included the words "Close Schools" as one means to "Maximize Use of Current Revenue". Hearing Exhibit No. 17. This flow chart was not included in the public record of the meeting. Hearing Exhibit No. D at Paragraphs 8 and 9. It first appeared of record in the School Board exhibits provided to Appellants just before the hearing before the Administrative Law Judge. Id. at Paragraph 9.

On March 4, 2005 the members of the Adams School Building Facility Site Planning Committee were informed by Adams Principal Jaynette Rittman, "I just received word from Duane [Van Hemert] that our plan looks great and to send it to Judi Cunningham for approval. I just sent it on so I will let you know what she says. Thanks for your support and patience." Hearing Exhibit No. E.

In advance of five public forums held at the high schools in April, 2005, the School Board's press releases informed the public that "...the upcoming meetings were to discuss the District's ten year plan to repair and rebuild schools. Officials are reviewing the district's local option sales tax plan and have warned that plan revisions may be necessary." (Hearing Exhibits No.24, 26, and 27). The Public Meeting Notices for each of the public forums were identical: "A Community Meeting on the Schools First Mid Program Review will be held on....(day, date, time, name of high school). Members of the Des Moines Public Schools Board of Directors will

be in attendance". (Hearing Exhibit Nos. 30, 36, 44, 47, and 49). The notices did not mention closure of specific schools or school closings in general.

On May 27, 2005, the principals of the six attendance centers, including Ms. Rittman, were summoned to a meeting with District Superintendent Eric Witherspoon and Deputy Superintendent Linda Lane. They were given "backpack notices" with the instruction that such notices were to be sent home with their students that day. This was the first notice the principals had of the recommendation of closure of their schools. Testimony of Linda Westergaard, Appendix at pp. 11-12. The teachers were literally first informed of the District Superintendent's recommendation for closure of their school as they handed out notices to their students to take home on an "early out" Friday before the 2005 Memorial Day holiday weekend. The notices stated the School Board's final decision would be made on June 21, 2005. Hearing Exhibit No. 74.

The Tentative Agenda for the May 31, 2005 special School Board meeting, also released on May 27, 2005, included the District Superintendent's final recommendation as *Item No. 2, schools first Mid Program Review (05-070)*. Hearing Exhibit No. 85. Attachment No. 05-070 announced "the following timeline for receiving public input and making decisions on project adjustments, merger of schools and school closings":

- May 27, 2005 Recommendations released to the public
- May 31, 2005 Presentation of recommendations, public Input, discussion
- June 7, 2005 Public input, discussion
- June 21, 2005 Public input, decision on SCHOOLS FIRST adjustments"

Hearing Exhibit No. 83. The timeline was issued long after the District Board's staff under Van Hemert began research, study and planning. Van Hemert Depo. at pp. 44-47, 50-53. Further,

Van Hemert testified no study and planning on the school closings was done after May 31, 2003. Id. at pp. 52-53. Ultimately in the face of a tumultuous outcry, the Des Moines School Board postponed its decision to July 12, 2005. On that date, despite the repeated and continued urgings of many that the School Board stop the precipitous process forced upon the public and give opportunity to all interested parents, grandparents, groups and individuals to engage with the School Board in research, study and planning sufficient to either support or reject the District Superintendent's recommendations of the closure of the six attendance centers, the School Board approved, on a vote of 5 to 2, the closure of five attendance centers and deferral of further action on Howe Elementary "for now". Hearing Exhibit No. 136 at p.2.

Appellants filed their Section 290.1 Appeal Affidavit on August 8, 2005. [For a more complete statement of the evidence in the record, see pages 1 - 38 of Appellants' Post-Hearing Brief.]

III. SUMMARY OF THE ARGUMENT

The Appellants assert that the process employed by the Des Moines School Board in closing the attendance centers violated both the policy and procedures set out at Rule 281-19.1 and 19.2 of the Iowa Administrative Code. The Appellants urge this Board to modify the Proposed Decision to conform it to the uncontroverted record of such failure and thereby provide enforcement of these rules.

Rule 19.1 mandates that the process for determining whether to close an attendance center must involve public notice, public consideration and public involvement. It specifically states that the policies set out in Rule 19.2 are meant to insure a full opportunity for public participation in the relevant events. It states the intent of the rule is that its policies "...shall be

implemented by local boards in such a way as will most reasonably accommodate the specific facts and circumstances surrounding the decision with which the local board is faced." Rule 281-19.1, I.A.C.

District Board members were considering closing schools from February through May of 2005, and all study and planning for the attendance center closings was conducted by the Administration, commencing early in 2005 and concluding in late May, 2005. This was all done without any opportunity for public participation and without the benefit of groups and individuals selected by the School Board to assure the sufficiency of the research, study, and planning of such an important community issue as the closing of a school attendance center.

The timeline established by the Des Moines School Board at its May 31, 2005 special school board meeting was for "receiving public input and making decisions on project adjustments, merger of schools and school closings" in connection with its Mid Program Review of its SCHOOLS FIRST Program. There is simply no evidence in the record of this appeal that the School Board established a timeline in advance for carrying out the Rule 19.2 procedures involved in making the decision whether to close attendance centers within the district as required by Rules 19.1 and 19.2.

In satisfying Rule 19.2 (1) a local Iowa school board creates the period--*that belongs to the public*--for its research, study and planning concerning whether to close attendance centers within its district. The policy which the rule enforces is that the public is entitled to know the process for the School Board's determining whether to close an attendance center and to participate fully in such process from the outset and for the duration. **The District Board and its staff, by design, did not comply with this mandate.**

IV. ARGUMENT

A. THE PROPOSED DECISION FAILS TO CONSIDER ALL RELEVANT FACTS AND MUST, THEREFORE, BE REJECTED FOR FAILURE TO APPLY THE PROPER DE NOVO STANDARD OF REVIEW FOR APPEALS BROUGHT PURSUANT TO SECTION 290.1, CODE OF IOWA.

The Proposed Decision cites to *In re Jesse Bachman*, 13 D.o.E. 363 (1996) as first articulating a standard of review that this Board "...not overturn a local board decision unless the local decision is 'unreasonable and contrary to the best interest of education'." In actuality the *Bachman* decision gave further clarification to this Board's determination in *In re Debra Miller, et al.*, 13 D.o.E App. Dec. 303, 318 (1996) to return to its historic *de novo* scope of review for appeals brought to this Board pursuant to Iowa Code Section 290.1. This was explained in Brief Point I: SCOPE OF REVIEW IS DE NOVO, APPELLANTS' PREHEARING BRIEF at pp. 1-2. The Proposed Decision, however, makes no reference to *Miller*.

Appellants acknowledge that the *Bachman* decision reined in *Miller* to the extent it removed the "ill-advised, unwise and inexpedient" language from the lexicon of review but--most importantly--*Bachman* did not overturn the *de novo* scope of review standard enunciated in *Miller*.

In applying *de novo* review to the facts of a pending appeal, the Board not only asks whether the decision of the local Iowa school board was arbitrary, capricious, or an abuse of authority but it further scrutinizes all relevant facts before it to determine whether the challenged decision is unreasonable and against the best interests of education. *Id.* at 318. When the local school board's process of decision-making is substantially deficient in appropriate research, planning and public involvement, undertaken with unnecessary haste and in disregard of the

rules governing such deliberations, this Board must overturn such action and return the matter to the local board for further proceedings. *In re Debra Miller, et al.*, at 320. Such is the case in this appeal. On appeal to District Court, action by this agency that is inconsistent with its own rule requires the District Court to reverse that agency action. Section 17A.19(10)(g), Iowa Code.

B. THE PROPOSED DECISION GIVES NO FORCE AND EFFECT TO THE PUBLIC POLICY CONSIDERATIONS THIS BOARD HAS MANDATED IN I.A.C. §281-19.1 THAT A LOCAL SCHOOL BOARD MUST INCLUDE IN ESTABLISHING ITS PROCESS FOR ATTENDANCE CENTER CLOSINGS.

The Proposed Decision speaks of the Barker "guidelines" while purporting to apply the Barker "rules". Appellants urge this doublespeak has resulted in two fatal errors: 1) a permissive deference to the Des Moines School Board which is improper and 2) a complete disregard for the public policy considerations the Des Moines School Board was required to include in establishing its process for attendance center closings within its district.

With respect to the first error, Appellants set out prior to the hearing of their appeal, the history of the permissive nature of this Board's review under the *Barker* guidelines. Appellants then showed there was a change to strict adherence mandated by the formal promulgation of the attendance center closing procedure rules at 281-19.1 and 19.2, I.A.C. See Appellants' Prehearing Brief, Brief Point II at pp. 3-4.

With respect to the second error, Appellants specifically set out the language of Rule 19.1 for consideration in the determination of its appeal. See Appellants' Post Hearing Brief, Brief Point V at pp.39-40. Yet, the Proposed Decision accords no force and effect to Rule 19.1, whatsoever: "We determine only whether the local Board provided sufficient process as required by the seven regulatory factors set forth in our chapter 19 rules."

In promulgating the *Barker* guidelines as administrative rules this Board chose to specifically enunciate what the rules were to accomplish. The discretion as to the number of attendance centers to be operated within its district belongs to the local school board but the process by which such decision is made belongs to the public. The language of the rule is clear and unequivocal:

"281--19.1(256.279) Policy. ...The process for determining whether to close an attendance center must involve public notice, public consideration, and public involvement. The policies set forth in rule 281--19.2(256.279 are meant to ensure full opportunity for public participation in the relevant events. It is intended that the policies shall be implemented by local boards in such a way that will most reasonably accommodate the specific facts and circumstances surrounding the decision with which the local board is faced."

The Proposed Decision's failure to consider Rule 19.1 amounts to a **conscious** disregard of this Board's statutory supervisory responsibility and authority over local Iowa school boards. Rule 19.1 assures the public, whether the school district is large or small, urban or rural, that there shall be full opportunity for public participation in the process by which the school district determines whether to close an attendance center. The public is entitled to rely upon this Board to enforce--not denigrate--its rules. Section 17A.19(10)(g), Iowa Code.

C. THE PROPOSED DECISION FAILS TO CONSIDER WHETHER THE DES MOINES SCHOOL BOARD'S IMPLEMENTATION OF ATTENDANCE CENTER CLOSINGS SUBSTANTIALLY COMPLIED WITH EACH SUBSECTION OF I.A.C. §281-19.2.

The Proposed Decision's disregard for Rule 19.1 assured the Des Moines School Board there would be no inquiry of substance into its challenged process. The following relevant facts pertaining to each of the Rule 19.2 procedures demonstrates the complete lack of any accommodation-- much less the "most reasonable accommodation" required by Rule 19.1--by the Des Moines School Board to "ensure full opportunity for public participation" when the issue

of whether attendance centers should be closed arose during its Mid Program Review of its first five years use of the special school infrastructure LOSST revenues.

(1). Rule 19.2(1) requires a local Iowa school board to establish in advance a timeline for carrying out the procedures for attendance center closings.

In satisfying Rule 19.2(1) a local Iowa school board creates the period--that belongs to the public--for research, study and planning concerning whether to close attendance centers. It is the public who is entitled to know the process and to participate fully in it from the outset and for the duration.

I.A.C. § 281-19.2(1) requires that the "board shall establish a timeline *in advance for carrying out the procedures involved in making the decision* [Emphasis added] A local school board cannot rely on a retroactive timeline that "looks back." Such a retroactive timeline does not comply with the mandate of § 281-19.2(1). *In re Johnson & Grant Elementary Buildings*, 21 D.o.E. App. Dec. 1, p. 13.

Duane Van Hemert testified in his deposition:

Board members were "considering" closing and merging schools in February, March, April and May of 2005. Van Hemert Depo. pp. 35:22 - 37:5. There was no notice to the public before May 31, 2005, that the Board was considering closing or merging schools. *Id.* at 37:15 - 38:24. The Administration discussed closing of specific named schools "in early 2005, from January to February on into May." *Id.* at 39:24 - 40:21. The Administration was considering the specific schools during March, April and May of 2005, and the Board knew this. *Id.* at 44:3 - 45:8. Van Hemert states that prior to May 31, 2005, study and planning on which specific schools to close was done by the Administration rather than by the Board. [The evidence shows

that no time line for the consideration of closing the schools involved was issued prior to May 31, 2005.] Id. at 45:9 - 17.

Van Hemert claims the Administration studied a number of factors in making the decision on the school closings. He testifies all of this study was done “solely in-house because it would have been counterproductive to do otherwise.” Id. at 45:18 - 47:22. As early as February 2005, Van Hemert, the Superintendent (Dr. Eric Witherspoon) and the Deputy Superintendent discussed by name closing Adams, Moore, Edmunds, Cowles and Central Academy. Id. at 50:21 - 51:11. Van Hemert testified it would have been a “disservice to the community to talk about a specific school prior to the recommendation being made.” He said he wouldn’t have given consideration to the fact the public did not want a school closed. Id. at 51:12 - 52:21. Van Hemert testified no study and planning on the school closings was done after May 31, 2005. He said after that date it was just a process of providing information that had been accumulated by the Administration before May 31, 2005. Id. at 52:22 - 53:20. Community input on the school closing recommendation was not sought by the Administration because members of the public would all say, “Yeah, you’ve got to close schools, just don’t close mine.” Id. at 104:16 - 105:6.

By its own admission the Des Moines School Board informed the public of its consideration of attendance center closings on May 27, 2005 as part of the *Item 2, Schools First Mid Program Review (05-070)* entry on its Tentative Agenda for the special May 31, 2005 School Board meeting. Hearing Exhibit No. 85 at p. 7. The 05-070 Agenda Attachment document refers to the period from May 27 to June 21 as the *timeline for receiving public input and making decisions* on project adjustments, merger of schools and school closings. Following

an instantaneous and tumultuous outcry of foul from the public, the Des Moines School Board did delay its final vote on the SCHOOLS FIRST MID PROGRAM REVIEW item until its July 12, 2005 meeting.

By July 12, the School Board's timeline for "public input" had ballooned to some 27 entries, stretching back to cover the entire period of its Mid Program Review from October 4, 2004 to May 27, 2005. Hearing Exhibit No. 135 pp. 46-47. The "facts and circumstances" the School Board failed to take into account, however, was that the review of its first five-years use of such funds was literally the last place the public would expect school closures to be considered. Van Hemert testified concerning "the public perception of what they're going to get with their sales tax dollars. The public perceives it was every building and everything that needed to be fixed was going to be fixed." Van Hemert Deposition at pp. 83, lines 10-16. This expectation was consistent with the promise to the voters in 1999 in the Ten Year Plan:

"This plan: Addresses the needs of all schools in the district....It is important to emphasize that this plan calls for addressing the needs of all schools with the revenues and interest from the local sales tax....The DLR report describes the scope of facility needs in Des Moines and will serve as the basis for developing individual school design plans....The district intends to move forward in each of its school buildings with the projects cited in the DLR report within the budget constraints of the sales tax revenue." (Emphasis added).

Hearing Exhibit No. 2 at pp. 1-2. (The DLR report for each individual attendance center was printed out in the Ten Year Plan.)

Since it was the needs of every school building that were to be addressed with the revenues from the special school infrastructure LOSST revenues, in such circumstance it was incumbent upon the Des Moines School Board to carve out the school closure questions from the Mid Program Review of the use of such revenues and proceed thereafter to comply with Rules

19.1 and 19.2, commencing with Rule 19.2(1).

The mandate to local Iowa school boards of Rule 19.2(1) to establish a timeline in advance of carrying out the procedures involved in making the decision to close the attendance centers within their districts is the bedrock of the procedures. In refusing to require such a timeline the Proposed Decision denies the protections of this Board's rules to the very public for which they were adopted.

(2). Rule 19.2(2) requires a local Iowa school board to inform segments of the community within its district that attendance center closings are under consideration by the school board.

Rule 19.2(2) places an affirmative duty upon local Iowa school boards to inform the various segments of the community that attendance center closings are under consideration. The rule minces no words: "This shall be done in a manner reasonably calculated to apprise the public of that information." Id.

A cursory reading of the meeting notices, the tentative agendas with supporting attachments, and the minutes for all 27 meetings listed in the July 12th litany of meetings clearly shows that the first public disclosure of the School Board's consideration of attendance center closings was on May 27, 2005. The steady stream of Mid-Program Review documents from October 4, 2004 to May 27, 2005 made no mention of school closings.

Nor does it follow that various segments of the community were informed of attendance center closings because they were informed of the Des Moines School Board's extended review of its past and future uses of the special 1-cent local option sales tax revenues. The circumstances by which the School Board achieved such a revenue stream assured quite the opposite message would be delivered.

It took the Des Moines School Board three attempts to secure voter approval of these additional sales tax revenues in 1999 for school infrastructure needs. It was only after the School Board adopted a detailed *Ten Year Community School Facilities Action Plan* [the Ten Year Plan], which promised the voters that such revenues would be used to repair and renovate every school in the district as set out in the plan, that the voters approved the additional one-cent sales tax to be spent exclusively for school infrastructure needs. Hearing Exhibit No. 2 at pp. 1-2.

Not only is there an inventory of need for every Des Moines school-- including those now slated for closing--set out in detail in the plan, the Des Moines School Board pledged that community input would be aggressively sought throughout the implementation of the plan:

"1. Building Facility Teams

A facility team will be formed for each project and charged with designing the renovation and/or new construction to meet educational needs, to provide for community use of the facility and to be within budget...project teams will be comprised of individuals who represent parents, students, school staff, city planners, area businesses, neighborhood association and the community at large. A project architect and other design and construction professionals will also be on the team."

Hearing Exhibit No. 2 at p. 406. Clearly when the School Board was wooing the voters, it understood what "segments of the community" means and just how crucial such participation in decision-making with regard to schools is.

The Ten-Year Plan prioritized the infrastructure needs of the Des Moines schools into four phases to stretch across the ten-year period during which time the School Board was to receive these special tax revenues. Hearing Exhibit No. 2 at pp.5-8, 15-383. This phasing of the building projects meant that as some schools were being considered for closing--Howe, Adams and Central Campus--there were active building facility teams up and running while in others--

Moore, Edmunds and Cowles--it was too early in the process for such teams to exist. But, in all six of these attendance centers there were parents, students, school staff, city planners, area businesses, neighborhood associations, and the community at large, none of whom were informed and invited to the table to consider school closings.

The Des Moines School Board, contrary to the plain language of the rules, ignored its affirmative duty to inform various segments of the community of its consideration of attendance center closings at the outset of the process. It undertook to fully develop its proposal for the closures of the six attendance centers "in house"--as set out above in further detail in Brief Point IV(C)(1)--without any disclosure to the affected school communities or the public at large that it was undertaking such research, study and planning. The Des Moines School Board's tardy release of its consideration of closing six attendance centers via the release of its May 31st tentative agenda on May 27, 2005 and the attendant press release, ignited the very public it was to inform.

(3). Rule 19.2(3) requires a local Iowa school board to seek public input in all study and planning steps involved in making the decision to close an attendance center within its district.

The Proposed Decision eviscerates the plain language of Rule 19.2(3). The rule gives the public--in all its facets, experience, and wisdom--a right of inclusion in all study and planning steps undertaken by a local Iowa school board when consideration of closing attendance centers occurs. This is not an empty gesture. A local school board and its administration hold the schools and their future in trust and the trust beneficiary is the public.

When the Des Moines School Board began to take steps in making a decision to close attendance centers it should have convened the Building Facility teams, or their informal

counterparts in the schools which had not yet formed such teams, and said to them in a direct, straightforward and honest way the jeopardy of closing each school was facing **then** and enlisted their public input in all study and planning involved in making the decision whether to close.

The impact of the Des Moines School Board's departure from appropriate procedure was devastating to the public's confidence and trust. These six attendance centers collectively represent 349 years of partnership between the School Board and the public it serves. Hearing Exhibit No. 2 at pp. 151, 175, 241, 279, 345 and 373. Rule 19.2(3) gives the public a right to be included in all study and planning steps involved in bringing such partnerships to a close. The exclusion of the public from the study and planning could only invite the revolt of the public which ensued.

The clear import of the rules is that when a local Iowa school board follows the rules, the public will see the fairness and balance and wisdom with which the school board grapples with complex and difficult choices between competing interests in its district and will accept as necessary an otherwise unpopular and distasteful closure decision or, in the process, the school board, in league with the public, will find a way to keep the attendance centers open. Where there is a will, there is quite often a way--if it is sought.

The Des Moines School Board accorded a scant 26 days to closing six attendance centers, including four neighborhood elementary schools--one of which has a magnet school fine arts curriculum drawing students from across the district and the entire metropolitan area--, the Central Campus building facility housing the district's regional advanced placement academy with students from 29 different school districts in its Career and Technical Institute, alternative high school, the Central Academy preparing students for the competitive demands of the nation's

top colleges, World Languages, and English as a Second Language curriculums and the Cowles building facility housing the Des Moines public school Montessori curriculum including pre-school through eighth grade, the district's FOCUS program and daycare for the portion of the day remaining after the pre-school Montessori instruction.

The Des Moines School Board simply ignored the rules and took all study and planning steps involved in reaching the decision to close these six attendance centers outside the bother of the public eye. See Brief Point IV(C)(1) above. The public was not privy to the school closings until the matter sprang fully formed from the tentative agenda for the May 31st Special Meeting released on May 27th. Indeed, the matter was so fully formed that it was the announced intent of the School Board to bring the matter to final vote at its June 21st meeting--some 26 days later. To uphold this record as substantially complying with Rule 19.2(3), as the Proposed Decision does, is to render public participation in study and planning of school closures of no force and effect.

(4). Rule 19.2(4) requires a local Iowa school board, with groups and individuals it selects, to carry out research, study and planning sufficient to support the closure decision it makes.

Rule 19.2(4) sets out the parameters of sufficient research, study and planning when a local Iowa school board is considering closing an attendance center. Such efforts shall be carried out with groups and individuals selected by the local school board and shall include consideration of, *at a minimum*, student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment. Id.

The record before this Board shows only an "in-house" research, study, and planning effort by the Executive Director of Building Facilities, Duane Van Hemert, which is, on its face,

grossly inadequate. For example, there is no research, study, and planning for the busing which inevitably must be provided to the Edmunds Elementary pupils who are to be schooled in a downtown office building, nor was there any consideration given to the complete lack of outdoor playground facilities at the downtown location. In fact, Mr. Van Hemert's transportation reports urged in response to Appellants' challenge appear to be nothing more than the ordinary routine bus runs for the district which offer no evidence of the impact of closing the six attendance centers upon future transportation needs and expenses. Hearing Exhibit No. 53. None of the reports submitted by the School Board as its research, study and planning documents for the closures appear to be anything other than reports undertaken in the routine and ordinary course of running the district's business. Hearing Exhibits No. 53 - 58.

Even if it is established that such research is "sufficient" under the rule in that it included each of the enumerated considerations--which the Appellants strenuously urge is not the case--the Des Moines School Board, nevertheless, violated Rule 19.2(4) because it failed to carry out such research and planning with groups and individuals selected by the School Board.

Rule 19.2(4) requires that a local Iowa school board work collaboratively with groups and individuals it selects to obtain independent deliberation and confirmation of the recommendations the school board is receiving from its administration. The Des Moines School Board did not seek the advice, counsel, wisdom, insight or participation of other groups or individuals as it considered whether to close the attendance centers.

(5). Rule 19.2(5) requires a local Iowa school board to promote open and frank public discussion of the facts and issues involved in deciding whether to close an attendance center.

The Proposed Decision deems the mere attendance of Des Moines School Board

Members at public meetings to satisfy the affirmative duty of Rule 19.2(5) that the School Board promote open and frank public discussion of the facts and issues involved in considering attendance center closures. It strips the rule of any meaningful role.

The Des Moines School Board, in violation of the clear edicts of Rules 19.2(1) through 19.2(4), kept its consideration of attendance center closures under wraps until its administration had completed its recommendation. The Rule 19.2(5) requirement for open and frank discussion of the facts and issues involved in closing attendance centers must adhere from the inception and must continue throughout the School Board's carrying out of the procedures for closing attendance centers.

The record before the State Board in this appeal discloses a school board seeking public input during its Mid Program Review on the School Board's future use of the special school infrastructure LOSST revenues without any disclosure that it was studying and planning school closures as a solution to the LOSST revenue shortfall. Nor was there any disclosure to the public that responses given in the Mid Program Review would be used to justify school closures. Such a manipulation of the public is the polar opposite of the "open and frank public discussion of the facts and issues involved" required by Rule 19.2(5).

(6). Rule 19.2(6) requires a local Iowa school board to make a proper record of all steps taken in the making of the decision to close an attendance center.

A Rule 19.2(6) record, at a minimum, means a contemporaneous written record, open to the public, of all steps taken by the Des Moines School Board, its administrative staff, and the groups and individuals selected by the board to carry out the study and planning involved in making the decision to close attendance centers. **The District Board and its staff began study and**

planning of school closures in February of 2005. Yet there is no record of this activity.

A proper record must allow the public to see for each study and planning step of the process the information considered, its source and the relationship of such information and such sources to the propositions being urged before the School Board. All deliberations and decision-making concerning closing attendance centers is to be transparent and available for all to examine and to respond to if deemed necessary, at a point in time when such response could make a difference in the School Board's consideration of the issues.

The Des Moines School Board failed to make a record--let alone a proper one--of its compliance with Rules 19.2(1) through 19.2(5) because it had nothing to record. It failed in every respect to fulfill its obligations under the administrative rules governing the closures of attendance centers and therefore cannot, pursuant to Rule 19.2(6), show a proper record of all steps taken in the making of the decision to close the six attendance centers. Having proceeded with impunity, it cannot make a record of propriety.

D. THE ROOSEVELT DECISION BY THIS BOARD WAS BASED ON LOCAL SCHOOL BOARD CONDUCT DESIGNED TO NOTIFY AND INVOLVE THE PUBLIC, WHILE THE DES MOINES DISTRICT'S CONDUCT WAS THE POLAR OPPOSITE.

The Proposed Decision at page 10 cites to *In re Closing of Roosevelt and Northwood Elementary Buildings*, 23 D.O.E. App. Dec. 222 (2005), as authority for the adequacy of its time line beginning May 27, 2005. In *Roosevelt* an elementary education study committee consisting of elementary school principals, employees, parents, and members of the general public first met on January 25, 2005. *Id.* at p. 3. The committee met six times between February 1 and March 3 and prepared minutes that were published on the district's web site. Individuals not on the committee were permitted to attend meetings. The published minutes reflected that the

committee began discussing school closures by its second meeting on February 8, 2005, and school closures were discussed at each meeting thereafter. On March 11 the elementary education committee filed a report recommending that two of four specifically identified elementary schools be closed to save expenses. On May 19, 2005, the board met and approved a proposed budget that included closing two schools. This was 100 days after the elementary education committee, with public input and study and planning, first publicized that school closings were under consideration. It was 69 days after the committee recommended that two of four specified elementary schools be closed. In *Roosevelt* members of the public were included from the very beginning in the committee study and planning process. In the present case members of the public were never involved in the study and planning phase of the attendance center closing process.

The District Board's Post-Hearing Brief admits at page 47 that an attendance center that is closed must have been specifically identified, studied and discussed in the study process. All of the study and planning in the present case took place without public input and without specifying which schools were under consideration for closing. Out of all of the high schools, the junior high schools and elementary schools in the Des Moines District, no schools under consideration for closing were identified until the May 27, 2005, recommendation to close the schools. The Proposed Decision at page 11 say the failure to "identify which schools could be closed before May 27 is not determinative." How could there have been "public input in all study and planning steps" for the closing of an attendance center when the study and planning is completed by the staff before it identifies the attendance center? Van Hemert Depo. p. 39-40, 44-47, 50-53, 104-105.

The Des Moines District Board issued its timeline on May 31, 2005, after the study and planning had occurred without the selection from the public of any groups and individuals to participate in it. The Administration had time to write a 147-page recommendation but no time to provide notice that the schools were under consideration for closing and no time to obtain public involvement in the study and planning process. The District Board's Post-Hearing Brief at page 56 describes "many months" of "study, research and planning," but this all occurred without the selection of any groups and individuals from the public to participate and without any notice to the public that the study and planning process to close the specific attendance centers was occurring.

The Proposed Decision, at pages 10-11, tries to transform the Mid-Program Review into the required § 281-19.2 seven-step process. The Proposed Decision promotes the April public meetings as in some way satisfying § 281-19.2. The problem is that none of the Mid-Program Review events, the District Board tries to point to, ever notified the public that the specific schools in question were members of a group under consideration for closing. In fact, the pre-meeting notices issued by the District Board did not even advise that attendance center closings in general would be discussed.

There is no similarity whatsoever between the *Roosevelt* case and the secret manner in which the District Board in the present case proceeded to close each of these specific attendance centers. Study and planning was completed before notice to the public and before establishment of a timeline for carrying out the procedures involved in making the decision. As a consequence, the District Board failed to "inform all segments of the community within its district that the matter [closing the attendance center] was under consideration..." The secrecy also resulted in a

failure to secure "public input in all study and planning steps involved in making the decision." [emphasis added]. The public in *Roosevelt* knew what was going on and was involved. The District Board in the present appeal consciously proceeded in a manner that ensured that would not happen.

CONCLUSION

This Board's rules of procedure for school closing decisions are hierarchical. Each rule builds upon the previous rule. Not surprisingly, upon challenge, a local school board must demonstrate it has "...substantially complied with all of the rules". Having failed to follow any of the applicable rules, the Des Moines School Board cannot establish that it substantially complied with all the rules.

The Des Moines School Board did not establish a timeline in advance for carrying out this Board's procedures involved in making the decision of whether to close the attendance centers. It failed to inform the various segments of the community that the matter of closing attendance centers was under consideration. It did not seek any public participation or public involvement in its research, study and planning for the closings of the attendance centers. It failed to select and collaborate with groups and individuals in the research, study and planning it undertook in considering whether to close the attendance centers. It thwarted, at every hand, the public discussion of the facts and issues involved. If this is, as the Proposed Decision holds, substantial compliance with this Board's rules, then why have rules at all?

When each step of the rule is followed, the whole is literally greater than the sum of the parts. The synergy of compliance itself contributes to the full opportunity for public participation mandated by this Board in the rules. When the rules, in whole or in part are ignored, there is an

inevitable loss of all that public participation could contribute to the consideration of whether or not to close attendance centers. All eyes are upon this Board and this record. The emerging query is will the Board enforce the plain language of its rules governing school closures? Appellants respectfully urge the Board to respond in the affirmative and direct modification of the Proposed Decision to reflect such affirmation.

Appellants respectfully request to present oral argument before this Board.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record or an unrepresented party herein at their respective addresses disclosed on this pleading on June ____, 2006.

By:	<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered	<input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail	<input type="checkbox"/> Other

Signature _____

guidelines. Seven criteria, all of which refer to process, must be substantially met by the local Board. The purpose of the guidelines is to make sure that affected pupils and their families have opportunity for input before attendance centers are closed. Local boards have unambiguous statutory authority to close attendance centers, so the State Board does not review the wisdom of such decisions. The decision to close the affected attendance centers was a marked departure from the District's original Ten-Year Plan. Nevertheless, as a matter of procedure, the Des Moines School Board substantially complied with all seven criteria.

The Appellants have filed an appeal of the Proposed Decision herein, so the attachments include the notice of appeal and briefs from both parties.

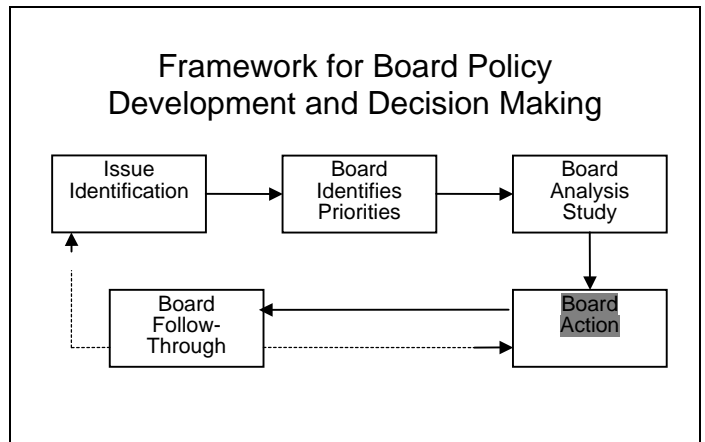
In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has one or more questions for the Attorney General's office, let us know several days in advance of the May 11 meeting so we can arrange for an assistant Attorney General to be present.

RECOMMENDATION: It is recommended that the State Board approve the Administrative Law Judge's decision to affirm the Des Moines Public School District's Board of Director's decision herein to close the aforementioned attendance centers.

Iowa State Board of Education

Executive Summary

May 11, 2006



Agenda Item: *In re Amber Criqui*, 24 D.o.E. App. Dec. 33

Iowa Goal: (2) All K-12 students will achieve at high levels, prepared for success beyond high school.

Equity Impact Statement: This is an expulsion appeal. Therefore, it provides guidance to all school districts facing expulsion recommendations, as well as providing useful guidance for students and their families.

Presenter: Carol Greta

Attachments: One

Recommendation: It is recommended that the State Board approve the Administrative Law Judge's proposed decision herein.

Background: On January 10, 2006, the Chariton School District voted to expel Amber Criqui under two grounds: (1) assaulting a fellow student on 12/16/05 on school grounds and (2) past violations of school rules, including disrespect to staff, threatening behaviors toward students, and physical violence against other students. No claim was made that procedural due process was deficient. The defenses urged were that Amber was reacting to racial slurs and that the District had not done enough to protect Amber.

Using the correct standard of review, the State Board must determine whether the decision to expel was reasonable and not contrary to the best interest of education. Case law shows that schools have a great deal of latitude when disciplining students as a means of keeping order in the schools. There was no evidence that Amber's assaultive behavior was in reaction to racial slurs

directed at her; even if such evidence had been put forth, physical violence is not a permissible reaction to verbal abuse. There was also no evidence that the District did not protect Amber. It provided her with the forms to fill out when alleging harassment by a peer and even in the absence of the filing of such forms, the District punished a student whom it found to have verbally harassed Amber. Finally, there was ample evidence that District staff tried to improve what the Appellant called her daughter's "attitude." Amber herself rejected such efforts.

In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has one or more questions for the Attorney General's office, let us know several days in advance of the May 11 meeting so we can arrange for an assistant Attorney General to be present.

RECOMMENDATION: It is recommended that the State Board approve, as being reasonable and not contrary to the best interest of education, the Administrative Law Judge's decision to affirm the Chariton Community School District's Board of Director's decision herein to expel Amber Criqui for one year.

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 24 D.o.E. App. Dec. 33)**

In re Amber Criqui

Jeannette Criqui,	:	
Appellant,	:	PROPOSED
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4628]
Chariton Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on February 1, 2006, before designated administrative law judge Carol J. Greta, J.D. The Appellant, Jeannette Criqui [“Ms. Criqui”], was present on behalf of her minor daughter, Amber. Amber and Amber’s father, Richard Felts, also participated in the hearing. The Appellee District was represented by attorney Paul Goldsmith. Also participating on behalf of the District were Superintendent Robert Newsum¹, Secondary Principal Russ Reiter, Assistant Secondary Principal Kevin Seney, and teacher Andrew Fuhs. Present throughout the hearing but not participating herein were District Board secretary Kelley Reece and the District’s School Resource Officer, Marcus Kious.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2005). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Ms. Criqui seeks reversal of the January 10, 2006 decision of the local board of directors of the Chariton School District to expel Amber for one calendar year (the balance of the 2005-06 school year and so much of the 2006-07 school year to equal one calendar year).

**I.
FINDINGS OF FACT**

At the time of her expulsion, Amber was in the 11th grade at Chariton High School. The notice of the expulsion hearing to her parents (dated January 4, 2006) states that the administration was recommending to the local Board that Amber be expelled for an assault against another student on school grounds on December 16, 2005, and for a multitude of past violations of school rules, including “[p]hysical violence/fighting, disrespect to staff, and threatening behaviors toward students.”

¹ Supt. Newsum, in Des Moines for another matter, was physically present in the same room as the administrative law judge.

Amber's disciplinary record discloses seven incidents of verbal harassment of other students, five incidents of disrespect toward school staff, three incidents of physical violence against other students at school, and one possession of tobacco at school. Nine of Amber's conduct violations occurred in the ten week period ending with the final incident of December 16.

Assistant Principal Seney, noting that Amber was suspended from school during the 2004-05 school year a total of 17 days, used two resources at the beginning of the current school year to help Amber get a fresh start. These resources are Capturing Kids' Hearts and Positive Behavioral Supports. The goal of both programs is for schools to make positive connections with students. Specific to Amber was the goal of changing her reputation at school from one of a bully to one of a person who makes positive contributions to the school. Mr. Seney described how these efforts paid off early in the school year; that Amber's "disposition became much more friendly and positive than it ever had in the past." Amber had no disciplinary referrals the first seven to eight weeks of school this school year.

However, starting in mid-October, Amber's disciplinary record picked up. Twice in October, she clashed with teachers with whose directives she disagreed. In November she pushed another student in a school hallway. And in December Amber was given a three day out-of-school suspension for threatening other students and another three days removal from school for acting disrespectfully to staff when she informed Mr. Seney, using obscene language, that he was not going to suspend her.

The out-of-school suspension period included December 16, a Friday. There is disagreement between the parties whether Amber had permission to be on school grounds that day for the limited purpose of retrieving her books and assignments. Assuming for the sake of argument that Amber believed she had permission to be at school to obtain homework, what next occurred on school grounds was the "last straw" for District administrators.

Mr. Seney saw Amber in the media center and told her to get what she needed and leave. Amber informed Mr. Seney that he could not talk to her and to leave her alone. She left the building, but did not leave the school grounds. She waited by an exit. When another student left the building, a shouting match ensued between Amber, her mother, her sister, and the other student. Teacher Andrew Fuhs witnessed Amber hit the other student in the face, separated the two students, and instructed Amber to leave. Moments later, Amber circled around Mr. Fuhs and resumed hitting the other girl. The other student did not hit Amber, but did strike Amber's mother in the face with a bookbag or purse.² Amber does not dispute that she assaulted the other student; she states that she

² Amber does not claim that she assaulted the other student in defense of her mother; the incident between Ms. Criqui and the other student occurred after Amber's assault on the other student. It was referred to local law enforcement. There is nothing more in this record about any contact not involving Amber directly.

had overheard the other student talking about her and that the other student responded “make me” when Amber told her to stop.

Amber minimizes and offers excuses for her misconduct, but regarding only one incident does she outright dispute her culpability. Regarding the November 30 incident when she is accused of pushing another student in the hallway, Amber states that she tripped and fell into the student. The District believes this is not a credible account, but rather that Amber, who was standing by her own locker at the time, deliberately threw an elbow into the other student as that student walked by Amber. Often, Amber’s account of the incidents consists of blaming others along the line of “the teacher couldn’t speak to me that way” or “the other student had it coming.”

In her notice of appeal, Ms. Criqui states that Amber was reacting to racial slurs in many of the incidents. No examples were offered in the notice or in testimony at this hearing. In Amber’s seven-page, typewritten account offered in her defense, she addresses her “side” of 26 separate incidents. She writes that twice a racial epithet was directed at her, presumably by another student. The first occasion was in November of 2004. At that time a student was not addressing Amber directly but was talking to a school official about Amber, and used a pejorative term to describe Amber.³ On December 2, 2005, Amber told Mr. Seney that she did not feel safe at the high school because she had overheard two girls call her an ugly, racially-charged name, and then tell Amber “too bad Halloween is over [because] we could have [hung you] to scare away the black trick-or-treaters.” But Amber did not elaborate upon her written statement in her testimony, and in her written account she does not claim that this verbal abuse is a defense to any of the incidents of harassment or assault for which she was punished.

Ms. Criqui also did not elaborate on her assertion that Amber was reacting to racially-motivated provocation. Rather, she argued that (1) no one at the District informed Amber of complaint forms available to students to use to report peer harassment and (2) no one at the District tried to help Amber with her “attitude.”

Principal Reiter refuted Ms. Criqui’s first argument when he testified that Amber was given the complaint forms in the spring of 2005 but never returned any. Amber did not dispute that she had the complaint forms at her disposal.⁴

As to helping Amber, Mr. Seney provided an abundance of evidence that he tried in many and creative ways to reach out to Amber. In a back-handed recognition of his efforts, Amber complained at this hearing that, as a “B/C” student, she was in need of no

³ By her own account, Amber responded with a derogatory term toward the other student.

⁴ The absence of a written complaint from Amber did not stop the District from suspending another student whom it determined had harassed Amber.

help. She protested here that Mr. Seney had no “right to try to get me in with a better group of kids.”

During the expulsion hearing, the local Board met in closed session for approximately two-and-a-half hours to hear from witnesses and deliberate on the administration’s recommendation. Its members voted unanimously to expel Amber for one calendar year. Specifically, the order subject to this appeal states as follows:

- A. For the remainder of this school year (2005-2006), she [Amber] shall be expelled from school, however, she shall receive her books and homework from the school which she shall complete at home, and her tests will be arranged by the high school administration to be taken at a time and location where she is excluded from other students.
- B. For the 2006-2007 school year, during the remainder of her expulsion, she will be allowed to attend the Chariton Alternative School as her sole option for educational benefits from the Chariton Community School District.

II. CONCLUSIONS OF LAW

Standard of Review

The Legislature has conferred upon local boards of education the authority to set rules of conduct for students and to discipline them for violations of the same. *See* Iowa Code section 279.8, which states in pertinent part, “The board shall make rules for its own government and that of the ... pupils” Local boards have explicit statutory authority to expel students pursuant to Iowa Code section 282.4, which states in pertinent part as follows:

- 1. The board may, by a majority vote, expel any student from school for a violation of the regulations or rules established by the board, or when the presence of the student is detrimental to the best interests of the school.

The Legislature also has provided a process in Iowa Code section 290.1 for aggrieved students or their parents to appeal local board decisions to the State Board of Education. Section 290.3 specifically directs this Board to render decisions that are “just and equitable” in hearing appeals from local board decisions.

Thus, the local boards have clear authority to expel students, we have clear authority to hear appeals therefrom, and section 290.3 directs that our review must be more “than that necessary to determine whether the school district abused its discretion.”

Sioux City Community School Dist. v. Iowa Department of Education, 659 N.W.2d 563, 569 (Iowa 2003).

In addition to the directive in section 290.3, the administrative rules adopted by this Board for appeals before us also state that our “decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.” 281—IAC 6.17(2). This led to a standard of review first articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), that we not overturn a local board decision unless the local decision is “unreasonable and contrary to the best interest of education.” *Id.* at 369.

Did the Local Board Act Unreasonably and Contrary to the Best Interest of Education?

The Chariton Community School District has a policy defining and punishing both disrespect to staff members as well as physical violence toward other students. The policy states in pertinent part as follows:

Disrespect to Staff Members: Any act which demeans the position of a staff member of the school. The use of profanity or a threat toward a staff member or the refusal to carry out instructions of a staff member while in the building or on the school grounds ... is considered to be disrespectful.

...

Fourth Offense – ...[M]ay be recommended for expulsion by the Board.

Fighting and Physical Violence – Any time a student is determined to be a danger to himself/herself or others during regular school day or at any school activity because of demonstrated acts of violence.

...

B. Toward other Students

...

Third Offense – Out-of-school suspension pending an expulsion hearing with the Board.

Ms. Criqui does not challenge the District’s authority to have and enforce the above policies. She does not claim that the above local policies are unreasonable. Nor does she argue that Amber was deprived in any way of procedural due process. As stated in the Findings of Fact, Ms. Criqui’s sole argument boils down to a claim that Amber was justified in her acts of violence against her peers.

Certainly, it is indisputable that “[s]chools must provide a safe environment in which learning can take place with as few distractions as practical.” *In re Peter Carlson*,

22 D.o.E. App. Dec. 1 (2003). The extensive depth and breadth of authority schools have over student conduct has been recognized by the U.S. Supreme Court, which stated that the “proper educational environment requires close supervision of schoolchildren” *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 741 (1985).

The responsibility that schools have to provide a safe environment in which learning can take place coexists with the right that a student has to defend herself *within the limits of the law*. Thus, we now examine Amber’s claim of justification.

There is nothing in statutory or case law that permits a student to assault another because of alleged name-calling. To the contrary, it has long been established that mere words, no matter how abusive or insulting they may be, cannot justify an assault. *Chapman v. Lamp*, 189 Iowa 771, 179 N.W. 50 (1920). Amber wrote that on two occasions over a 13-month period of time a racial epithet had been used to describe her. On one such occasion, the student was talking to a school official but knew that Amber was listening when she chose an ugly term to refer to Amber. More recently, she told Mr. Reiter that she did not feel safe at the high school because two girls made a remark about hanging Amber, who is a person of color.

Even if the remark was intended to frighten Amber (and the record simply is not clear about this because there was no testimony about either incident), she followed the correct procedure in reporting the incident to the school. There is no excuse for the remarks to which Amber was subjected, but nothing about those remarks gives her a legal justification for assaulting students.⁵

It is entirely reasonable for the Chariton Board of Education to have expelled Amber Criqui for one year.

Admission to another School or School District

Amber asks this Board to address how she may enroll in another school district if her family moves from the Chariton District. This is covered in Iowa Code section 282.4(3), which states, “...[I]f a student has been expelled or suspended from school and has not met the conditions of the expulsion or suspension, the student shall not be permitted to enroll in a school district until the board of directors of the school district approves, by a majority vote, the enrollment of the student.”

This language has not been litigated. It is not clear which school board must approve the enrollment of an expelled student.

⁵ The record also does not disclose whether any of the despicable remarks had been made by students who were assaulted by Amber.

Our guidance is that if Amber desires to enroll elsewhere before the period of expulsion expires, the board of the school district to which Amber seeks enrollment must approve. We also believe that a board in that position is well-advised to also seek permission from the board that expelled her. Local school boards in Iowa should recognize and honor the authority of another board to discipline its students. As a matter of courtesy and good faith, no school board should take action that effectively negates an expulsion decision reached by another board.

III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Chariton Community School District made on January 10, 2006, expelling Amber Criqui from the District for one year be **AFFIRMED**. There are no costs of this appeal to be assigned.

Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education